Central University of Kentucky, Cornell (Iowa), Creighton, Doshisha (Japan), Eureka, Fargo, University of Florida, Fremont, Geneva, University of Georgia, Hargchow (China), Hedding, Heidelberg, Hendrix, Hillsdale, Hiram, Illinois State Normal, James Milliken, Jefferson, University of Kansas, Keystone State Normal, Knox, Lawrence, Louisiana State Normal, Marshall, Maryville, Michigan Agricultural, Mississippi Agricultural and Mechanical School, Montana Wesleyan, Muskingum, Nankin (China), Nebraska Wesleyan, University of Nevada, Notre Dame, Oberlin, Ohio Wesleyan, University of Oregon, Oxford University, Pennsylvania State Normal, University of the Philippines, Stanford, St. Peter's, St. Viateurs, Tri-State, University of Utah, University of Virginia, Washington State, Wayne, West Maryland, Wooster, University of Wyoming, York, 1. There are students in attendance from 44 states and territories and from Canada, China, Ireland, and Japan.

AN EXTREME CASE IN THE APPLICATION OF THE SAFETY APPLIANCE ACT.—The recent case of *Gray* v. *Louisville & N. R. Co.* (D. C. Tenn.), 197 Fed. 874, is an extreme holding under the Safety Appliance Act of March 2, 1893, (27 Stat. at L. 531, chap. 196), as amended by the acts of April 1, 1896 (29 Stat. at L. 85, chap. 87), March 2, 1903 (32 Stat. at L. 943, chap. 976), and April 14, 1910 (36 Stat. at L. 278, chap. 160).

A car containing cotton shipped from another state arrived in the defendant company's yard at destination. While it was being shifted into position for transportation to the private switch track of the consignee, one of the draw-heads and couplers was jerked out so that one end of the car was left without a coupler that would operate automatically. Without being repaired, the car was transported to the private switch, unloaded, and with other cars left standing on the switch. In order to take this car to the shop for repairs, the defendant's yard engine coupled to another car (which was in good condition and which was being taken to the yards for general use) and pushed the good car back so that the defective car might be fastened to it by means of a chain coupling. While plaintiff's intestate, an employe of defendant, under orders of the conductor, was attempting to make this fastening, the engine shoved back and he was caught between the cars and killed. The action was brought for damages for the wrongful death. It was held that the private switch as thus used was a *railroad* and a part of defendant's *line* within the meaning of the Safety Appliance Act, and that the movement of the car was in violation of the Act.

It has been held that a belt line railroad, wholly within a state, engaged only in transferring cars from one trunk line to another, is a railroad within the act. *Belt Ry. Co. of Chicago* v. *United States,* 168 Fed. 542, 93 C. C. A. 666. There was a similar holding in *Union Stockyards Co.* v. *United States,* 169 Fed. 404. A terminal company which receives cars of coal coming from another state, and delivers them within its yards to engines of a railroad company, is engaged in interstate commerce within the meaning of the Act. *United States* v. *Northern Pac. Terminal Co.,* 144 Fed. 861. If a railroad is engaged in transporting articles of interstate commerce, it is within the Act

regardless of the location or the extent of the road. *United States* v. *Colorado & N. W. R. Co.*, 157 Fed. 321. Where a railroad company operates its trains engaged in interstate commerce, over the tracks of another company, under a contract, such other tracks are a part of the operating company's *line* within the meaning of the Act. *Philadelphia & R. Co.* v. *United States*, 191 Fed. 1, 111 C. C. A. 661. While the recent case represents the limits to which the courts will go in holding a piece of railroad track a *railroad* engaged in interstate commerce and a part of a greater railroad *line*, it is at least not in conflict with the former decisions and probably represents the position of the courts on this question.

On the other point decided in the recent case, viz., that the movement of the car under the conditions there stated was in violation of the Safety Appliance Act, the decisions are not so easily reconciled. The cases cited in the recent decision do not satisfactorily dispose of the question, because while they decide that the Act imposed on the company an absolute duty to have the cars equipped as provided in the Act, and to know when cars are defective, yet they do not decide what may be done by the company in an honest effort to repair a car that has unavoidably become defective away from the repair shops of the company. The Act certainly does not require impossible things to be done. Moving one or more cars to repair shops for repairs is not a violation of the Act. *Chicago & N. W. Ry. Co.* v. *United States*, 168 Fed. 236, 93 C. C. A. 450, 21 L. R. A. (N. S.) 690. Where a car can be repaired without serious inconvenience and delay, the carrier is not entitled to delay repairs until the car has been taken to the terminal yards for unloading, nor is it entitled to transport a car a considerable distance to its shops. *United States* v. *Southern Pac. Co.*, 154 Fed. 897. Cars with defective couplers must not be hauled past places where repairs may be made to more convenient places. *United States* v. *Chicago M. & St. P. Ry. Co.*, 149 Fed. 486; *Chicago Junction Ry. Co.* v. *King*, 169 Fed. 372, 94 C. C. A. 652. In a case where only the coupler chain was broken, but the repairs could not be made at the point where the defect was discovered without blockading the entire business in the yards and consignee's place of business was only four blocks away and nearer than the repair shops, it was held that defendant took the most practicable course and did not violate the Act by first taking the car to the consignee's place of business where it was unloaded and from there to the repair track. *United States* v. *Louisville & N. R. Co.*, 156 Fed. 195. Cars, in any movement for repairing them after they become defective in order to not be subject to the Act, must be wholly excluded from commercial use themselves and from other vehicles which are commercially employed. *Southern Ry. Co.* v. *Snyder*, 187 Fed. 492. The Act of April 14, 1910 (36 Stat. at L. 278, chap. 160) provides that when cars which have been properly equipped become defective while in use, and the defect cannot be repaired without taking the car to the repair shop, such car may be hauled to the nearest point where the repairs can be made without liability for the penalties imposed by the Safety Appliance Act, but such movement shall be at the sole risk of the carrier, and it shall not be relieved from liability for the death or injury of any employe caused by such movement of the defective car. It further provides

that nothing herein shall permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain livestock or perishable freight.

There is nothing in the report of the principal case to show whether the cause of action arose before or after the adoption of the Act of April 14, 1910. Prior to the Act of April 22, 1908 (35 Stat. at L. 65, chap. 148) the carrier had a defense where the contributory negligence of the party injured was the proximate cause of the injury. That Act took away the defense of contributory negligence in all cases where a violation of the Safety Appliance Act contributed to the injury. If the cause of action arose before April 14, 1910, defendant would not be absolutely liable for the personal injury unless the movement of the car was in violation of the Safety Appliance Act, and it would not be in violation of the act unless the case can be distinguished from the case of *United States* v. *Louisville & N. R. R. Co.*, before cited. If that distinction can be made, the movement of the car would yet not be in violation of the Act unless the violation consisted in moving the defective car at the same time that the good car was being taken to the yard for general use. It seems that the holding must be supported on the ground that the good car was then in commercial use and that the movement of the defective car was not wholly excluded from the movement of another car in commercial use. If the cause of action arose after April 14, 1910, defendant would be liable for the personal injury at all events, because the movement of the car would be at defendant's sole risk. This would be true whether it was in violation of the former Safety Appliance Acts or not, but under the Act of 1910 the movement of the defective car was not in violation of the Act unless the car to which it was being fastened was being commercially used. It must be noted that the action was for damages for the personal injury and was not an action for the penalty for the violation of the Act.

The decision is probably correct, but it is certainly an extreme application of the Safety Appliance Acts. J. J. K.

ADVISORY OPINIONS;—The Privy Council, in an appealed case from the Supreme Court of Canada, was called upon recently to determine the constitutionality of an act of the Dominion Parliament which required the judges of the Supreme Court to give advisory opinions upon request of the Governor-General. *Attorney General for Ontario,* v. *Attorney General for Dominion of Canada* [1912] A. C. 571. The BRITISH NORTH AMERICA ACT of 1867 St. of C. 1867, granted Canada political autonomy with defined powers for the executive, legislative and judicial departments. The authority to demand advisory opinion was not expressly given in the constitution, but §91 invested in the Dominion Parliament the duty of making laws for the peace, order and good government of Canada, and §101 authorized the establishment of the Supreme Court. Under these two sections Parliament enacted in 1875 the SUPREME COURT ACT OF CANADA, 38 Vict. c. 11, which was in substance, re-enacted, R. S. C. 1906 c. 139. By §60 of this act the governor in council was given authority to submit questions of law or fact to the Supreme